


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR KAPLAN

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2022 GENERAL ELECTION, A PROPOSED MEASURE TO SUPPORT COMMUNITY NEEDS AND ADAPT THE CURRENT TRANSIENT OCCUPANCY TAX TO BETTER CAPTURE EXTENDED STAY USAGE PATTERNS IN OAKLAND BY AMENDING OAKLAND MUNICIPAL CODE CHAPTER 4.24 TO IMPOSE A 14% MEDIUM TERM TRANSIENT OCCUPANCY TAX ON STAYS OF 31 TO 90 DAYS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO SUBMIT THIS MEASURE TO THE VOTERS

WHEREAS, maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public; and

WHEREAS, the City of Oakland wishes to provide funding for street and sidewalk repair and maintenance; homeless services; blight remediation and cleanup of trash and dumping; and services associated with civilian responders for mental health and other public health and safety needs, such as the Mobile Assistance Community Responders of Oakland ("MACRO") program, civilian park rangers, and community ambassadors; and

WHEREAS, vital community-based institutions, such as the Oakland Zoo, Oakland Convention and Visitors Bureau, Chabot Space and Science Center, Oakland Museum, and other cultural art and festival activities rely on current transient occupancy tax revenue; and

WHEREAS, these public spaces and amenities were placed under severe budgetary pressures due to significant reductions in current transient occupancy tax revenue as a result of the COVID-19 pandemic; and

WHEREAS, the current transient occupancy tax only imposes a 14 percent tax on individuals who stay at a hotel for a 1 to 30 day period; therefore, no tax is collected from individuals who have an extended or medium term stay at a hotel from 31 to 90 days; now, therefore, be it

RESOLVED: That the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed Ordinance amending Oakland Municipal Code Chapter 4.24 shall read as follows:

Be it ordained by the People of the City of Oakland:

Chapter 4.24 TRANSIENT OCCUPANCY TAX

4.24.020. Definitions

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter:

- A. "Hotel" means any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the city, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof as defined in subsection (~~C~~D) of this Section, for compensation, furnishes such right of occupancy to any transient as defined in subsection (~~D~~G) of this Section or Medium Term Transient as defined in subsection (B) of this Section.
- B. "Medium Term Transient" means any person who, for any period of more than thirty (30) consecutive days but not more than ninety (90) consecutive days, either at their own expense or at the expense of another, obtains the right to use space for sleeping or overnight accommodations in any hotel as defined in subsection (A) of this Section, for which a charge is made therefor. A person shall be considered a "Medium Term Transient" unless they enter into an agreement or contract for the right to use space for sleeping or overnight accommodations in a hotel for a period of longer than ninety (90) consecutive days or unless they extend an existing agreement or contract for accommodations beyond the ninety (90) day period, provided that if a person extends an existing agreement or contract for accommodations beyond the ninety (90) day period, they shall be considered a "Medium Term Transient" until the day their agreement or contract extending their accommodations beyond the ninety (90) day period begins.
- C. "Occupancy" means the compensated use of, or the unexercised right to use, space in a hotel, as defined in subsection (A) of this Section.

- D. "Operator" means the person who is proprietor of a hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall however, be considered to be compliance by both.

~~"Permanent resident" means any person who, as of a given date, has occupied or has had the right to occupy a room or rooms in a particular hotel, as defined in subsection (A) of this Section, for more than thirty consecutive days immediately preceding such date.~~

- E. "Person" means any non-exempt individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

- F. "Room rental" or "Rent" means the total charge ~~made by a hotel as defined in subsection (A)~~ paid by a transient as defined in subsection (G) of this Section or Medium Term Transient as defined in subsection (B) of this Section, for sleeping or overnight accommodations space furnished to a transient, as defined in subsection (C) of this Section, or Medium Term Transient, as defined in subsection (B) of this Section. If the charge made by such hotel to any transient includes a charge in addition to that for such occupancy or right to the use of such space for sleeping or overnight accommodations, then that portion of the total charge that represents only the sleeping or overnight accommodations shall be distinctly set out and billed to the transient as a separate item.

- G. "Transient" means any person who, for any period of not more than thirty (30) consecutive days, either at ~~his~~ their own expense or at the expense of another, obtains the right to use space for sleeping or overnight accommodations in any hotel as defined in subsection (A) of this Section, for which a charge is made therefor. A person shall be considered a "Transient" unless they enter into an agreement or contract for the right to use space for sleeping or overnight accommodations in a hotel for a period of longer than thirty (30) consecutive days or unless they extend an existing agreement or contract for accommodations beyond the thirty (30) day period, provided that if a person extends an existing agreement or contract for accommodations beyond the thirty (30) day period, they shall be considered a "Transient" until the day their agreement or contract extending their accommodations beyond the thirty (30) day period begins.

4.24.030. Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eleven (11) percent of the rent ~~charged by the operator~~ paid by the transient. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such a tax shall be paid directly to the Tax Administrator.

4.24.031. Imposition of surcharge.

- A. There shall be a tax of three percent of the rent ~~charged by the operator of a hotel~~ paid by the transient, in addition to the 11 percent tax specified in Section 4.24.030, for the privilege of occupancy in any hotel in the City (the "surcharge"). Subject to subsection E., below, the surcharge so collected shall be appropriated to the Oakland Convention and Visitors Bureau (OCVB), the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and the Cultural Arts Programs and Festivals as follows: 50 percent to OCVB, 12.5 percent to the Oakland Zoo, 12.5 percent to the Oakland Museum of California, 12.5 percent to Chabot Space and Science Center and 12.5 percent for Cultural Arts Programs and Festivals. The surcharge shall be not be appropriated for any purpose other than specifically set forth in this Subsection. Appropriations will be subject to applicable City policies.
- B. Said surcharge constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the surcharge shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the surcharge due is not paid to the operator of the hotel, the Tax Administrator may require that such a surcharge shall be paid directly to the Tax Administrator.
- C. All funds collected by the City from the surcharge imposed by this Section shall be immediately segregated from all other funds collected and shall be deposited into a special fund in the City treasury (the "surcharge fund"). All monies in the surcharge fund shall be distributed pursuant to Subsection A. herein on a monthly basis, following the month in which they were collected by the City.
- D. Pursuant to Section 4.24.050, on the receipt provided to the transient, the operator may state the current 11 percent tax specified in Section 4.24.030 and the three percent surcharge as a single transient occupancy tax of 14 percent.
- E. Annual Audit. An independent audit or review shall be performed annually as provided by Government Code sections 50075.1 and 50075.3 to assure accountability and the proper disbursement of the proceeds of this surcharge in accordance with the purposes stated herein. Surcharge proceeds may be used to pay for the audit or review.

4.24.032. Special Tax on Medium Term Transients

- A. For the privilege of occupancy in any hotel, each Medium Term Transient is subject to and shall pay a special tax in the amount of fourteen (14) percent of the rent paid by the Medium Term Transient.

- B. The tax constitutes a debt owed by the Medium Term Transient to the City which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be due upon the Medium Term Transient’s ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

- C. The tax imposed by this section is a special tax. All proceeds from the special tax imposed by this section shall be segregated from other funds and shall be deposited into the “Securing Our Safety Fund” in the City treasury and shall be used only for the purposes established by the voters for monies in the Securing Our Safety Fund.

As established by the voters, all monies in the “Securing Our Safety Fund” shall be appropriated only for the following purposes, subject to applicable City policies:

- 1. To fund street and sidewalk repair and maintenance; homeless services; blight remediation and cleanup of trash and dumping; services associated with civilian responders for mental health and other public health and safety needs, such as the Mobile Assistance Community Responders of Oakland (“MACRO”) program, civilian park rangers, and community ambassadors; and Oakland Children’s Fairyland.
- 2. To pay the cost of annual reports prepared under Government Code sections 50075.1 and 50075.3 to assure accountability and the proper disbursement of revenues deposited in the fund.
- 3. To pay for the City’s costs of an election to obtain voter approval of any tax that deposits revenues into the fund, including City Attorney costs to prepare the tax measure and ordinance and related documents.
- 4. To pay for the cost of administering any special taxes that deposit revenues into the fund, regardless of who or by what entity those administrative services are provided. No more than 10% of the special tax proceeds collected by City in any single year and deposited in the fund may be used to pay for such administrative costs.
- 5. To pay the cost of the legal defense, including attorney’s fees and other expenses, of a legal challenge to a special tax that deposits revenues into this fund.

- D. An independent audit or review shall be performed annually as provided by Government Code sections 50075.1 and 50075.3 to assure accountability and the proper disbursement of the proceeds of the tax imposed by this section in

accordance with the purposes of the Securing Our Safety Fund as established by the voters.

E. The tax imposed by this section shall not apply to any Medium Term Transient who is precluded or prohibited by State or federal law from being subject to the tax.

F. Any action to challenge the tax imposed by this section shall be brought pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860 et seq.

Section 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. It is hereby declared to be the intention of the electorate that they would have adopted this Ordinance had such unconstitutional, illegal or invalid provision, sentence, clause section or part thereof not been included herein.

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

Section 4. Special Tax; Two-Thirds Majority Approval; Effective Date; Legal Challenge. This Ordinance enacts a special tax under the authority of the Oakland City Charter and Title 5, Division 1, Part 1, Chapter 1, Article 3.5 of the Government Code, to be used only for the purposes stated in this Ordinance. The Ordinance shall be effective only if approved by two-thirds of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2023 and shall remain in effect until December 31, 2042. Any action to challenge the taxes imposed by this ordinance shall be brought pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860 et seq.

Section 5. Council Implementation. The City Council of the City of Oakland shall adopt any and all laws it deems necessary to implement the tax imposed by this Ordinance.

Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Chapter 4.24 of the Oakland Municipal Code in any manner that does not increase the rate of any tax or otherwise constitutes a tax increase for which voter approval is required by Article XIII C of the California Constitution, including adopting exemptions, waivers, or reductions of the tax.

Section 7. Administrative Regulations and Delegation. The City Administrator is authorized to adopt rules and regulations consistent with this measure as needed to implement this measure and to develop all related forms and other materials and take other steps as needed to implement this measure and make such interpretations of this measure as the City

Administrator may consider necessary to achieve the purposes of this measure. The City Administrator may delegate any authority within their discretion pursuant to this measure as they deem reasonably necessary.

Section 8. Reimbursement. At the discretion of the City Council, special tax revenues collected by the City pursuant to this Ordinance may be used to reimburse the City for costs incurred in connection with the election seeking voter approval of this Ordinance.

Section 9. Liberal Construction. This Ordinance shall be liberally construed to effectuate its purposes.
; and be it

FURTHER RESOLVED: That each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

Measure _____. Shall the Measure to fund street repair; homeless services; blight remediation; trash cleanup; civilian responder services for mental health and public safety; and Children’s Fairyland by enacting a special tax on persons staying in hotels from 31 to 90 days at 14% of the charges, generating an estimated \$1 to 1.5 million annually for twenty years, be adopted? [FINAL QUESTION TO BE DETERMINED BY THE CITY ATTORNEY]	Yes	
	No	

; and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the “City Clerk”) at least 88 days prior to the election to file with the Alameda County Clerk certified copies of this Resolution; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the recitals and the measure language to be voted on by the voters of the City of Oakland; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to cause the posting, publication, and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter 3.08 of the Oakland Municipal Code, the Government Code, and the Elections Code of the State of California; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the election.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California